

No. 04-4524

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED

FEB 04 2005

MAURICE ROGERS,)
Petitioner-Appellant,)
v.)
HARRY K. RUSSELL, Warden,)
Respondent-Appellee.)

ORDER 1:02cv79

A TRUE COPY
Attest:
LEONARD GREEN, Clerk
By *Merrey Barnes*
Deputy Clerk

Before: KENNEDY, MARTIN, and SUHRHEINRICH, Circuit Judges.

This matter is before the court upon consideration of the appellant's response to this court's order directing him to show cause why his appeal should not be dismissed for lack of jurisdiction on the basis of a late notice of appeal. The appellant responded by stating that he is not knowledgeable of the law, that he must rely on others for help in his legal matters, that he timely filed a notice of appeal with the district court after the entry of the decision, and that his motion for appointment of counsel and request for an extension of time for filing an appellate brief which he filed in this court was not intended to be a notice of appeal.

It appears from the documents before the court that the district court's judgment was entered May 27, 2004. Any notice of appeal was due to be filed by June 28, 2004. *See Fed. R. App. P. 4(a)(1) and 26(a).* The motions for appointment of counsel and for leave to proceed in forma pauperis were dated on July 3 and July 6, 2004, and filed in the district court on July 8, 2004. An order was entered August 23, 2004 ruling on those motions. A motion for an extension of time to file an appellate brief was received in this court on September 10, 2004. Because no appeal had been filed in this case, that motion was forwarded to the district court for filing as a notice of appeal, and it was docketed as appeal No. 04-4524. *See Fed. R. App. P. 4(d).* The document filed on

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September 10, 2004 as a notice of appeal from the May 27, 2004 judgment is late. *See Fed. R. App. P. 4(a) and 26(a).* Moreover, the appellant asserts that it was not intended to be a notice of appeal.

The failure to timely file a notice of appeal deprives an appellate court of jurisdiction. Compliance with Fed. R. App. P. 4(a) is a mandatory and jurisdictional prerequisite which this court can neither waive nor extend. *Baker v. Raulie*, 879 F.2d 1396, 1398 (6th Cir. 1989) (per curiam). Fed. R. App. P. 26(b) specifically provides that this court may not enlarge the time for filing a notice of appeal.

Accordingly, it is ordered that appeal No. 04-4524 is dismissed for lack of jurisdiction.

It is further directed that the district court search its files for the notice of appeal which the appellant alleges that he timely filed in the district court. If such a document evincing the appellant's intent to appeal is located, it should be filed and forwarded to this court as provided by Fed. R. App. P. 3(d) for docketing as a new appeal.

ENTERED BY ORDER OF THE COURT

Howard Green

Clerk